

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region IX

In The Matter Of:

McColl Superfund Site, Fullerton, CA)

Shell Oil Company,)
Union Oil Company of California,)
Atlantic Richfield Company,)
Texaco, Inc., and)
McAuley LCX Corporation,)

Respondents.)

Proceeding Under Section 106(a) of the)
Comprehensive Environmental Response,)
Compensation, and Liability Act of 1980,)
as amended (42 U.S.C. § 9606(a)))

U.S. EPA
Docket No. 93-21

ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND OTHER RESPONSE ACTIONS

TABLE OF CONTENTS

I. INTRODUCTION AND JURISDICTION.....	3
II. FINDINGS OF FACT.....	4
III. CONCLUSIONS OF LAW AND DETERMINATIONS.....	6
IV. NOTICE TO THE STATE.....	7
V. ORDER.....	7
VI. DEFINITIONS.....	8
VII. NOTICE OF INTENT TO COMPLY.....	10
VIII. PARTIES BOUND.....	10
IX. WORK TO BE PERFORMED.....	11
X. ENDANGERMENT AND EMERGENCY RESPONSE.....	18
XI. COMPLIANCE WITH APPLICABLE LAWS.....	19
XII. PROJECT MANAGER.....	20
XIII. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY.....	20
XIV. RECORD PRESERVATION.....	24
XV. DELAY IN PERFORMANCE.....	25
XVI. ASSURANCE OF ABILITY TO COMPLETE WORK.....	25
XVII. UNITED STATES NOT LIABLE.....	27
XVIII. ENFORCEMENT AND RESERVATIONS.....	27
XIX. EFFECTIVE DATE AND COMPUTATION OF TIME.....	29
XX. OPPORTUNITY TO CONFER.....	29

1 ADMINISTRATIVE ORDER
2 FOR REMEDIAL DESIGN AND OTHER RESPONSE ACTIONS

3 I. INTRODUCTION AND JURISDICTION

4 This Administrative Order (the "Order") directs Shell Oil
5 Company, Union Oil Company of California, Atlantic Richfield
6 Company, Texaco, Inc. (the "Oil Company Respondents"), and
7 McAuley LCX Corporation ("Respondent McAuley") (collectively
8 referred to as "Respondents") to perform the remedial design and
9 other response actions for the remedy selected and described in
10 the Record of Decision ("ROD") for the Source Soils Operable Unit
11 for the McColl Superfund Site ("the Site"), dated June 30, 1993.
12 The ROD is attached to this Order as Appendix 1 and is
13 incorporated herein by reference. Work required under this Order
14 is further defined in Section IX (Work To Be Performed). This
15 Order is issued to each Respondent by the United States
16 Environmental Protection Agency ("EPA") under the authority
17 vested in the President of the United States by Section 106(a) of
18 the Comprehensive Environmental Response, Compensation, and
19 Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C.
20 § 9606(a). This authority was delegated to the Administrator of
21 EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg.
22 2926, January 29, 1987), and was further delegated to EPA
23 Regional Administrators on September 13, 1987 by EPA Delegation
24 No. 14-14-B.

II. FINDINGS OF FACT

A. The twenty-two acre McColl Site is located in Fullerton, Orange County, California, approximately 25 miles southeast of Los Angeles. Housing developments border the Site to the east and south. Developed but open areas of a golf course and a regional park border the Site to the west. An oil field occupies an open area to the north.

B. There are no active facility processes at the Site. The Site contains twelve large unlined pits, called sumps, filled with refinery wastes placed there in the 1940's. The sumps have been periodically covered since then with drilling muds and fill materials. There are an estimated 100,000 cubic yards of waste and contaminated materials at the Site. The ROD contains a more detailed description of the Site.

C. A groundwater aquifer underlies the Site. The present horizontal groundwater flow is towards the southwest. The aquifer downgradient of the Site is used as a drinking water source by residents of the City of Fullerton. Depth to groundwater at the Site is approximately 250 feet.

D. The Site was included on the EPA National Priority List in September 1982, pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605.

E. EPA has undertaken various response actions at the Site. Following a remedial investigation and feasibility study conducted in part by certain Respondents, EPA selected an excavation and redisposal remedy in 1984. The State of California was designated the lead agency for the Site but was

1 later enjoined by a state court from implementing the remedy.
2 EPA undertook additional feasibility study work at the Site, and,
3 having assumed the lead in 1989, proposed an incineration remedy.
4 Following public comment and field testing, EPA reevaluated
5 remedial alternatives. In August 1992, EPA published its updated
6 feasibility study, called the Supplemental Reevaluation of
7 Alternatives II, and issued a proposed plan identifying soft-
8 material solidification as the preferred remedy.

9 F. EPA's decision selecting soft-material solidification
10 with a contingency of RCRA-closure is embodied in the ROD
11 executed on June 30, 1993, upon which the State of California had
12 a reasonable opportunity to review and comment. The ROD is
13 supported by an administrative record that contains the documents
14 and information upon which EPA based the selection of the remedy.
15 The administrative record was made available to the public at the
16 time of the issuance of the proposed plan in August 1992.

17 G. EPA and the State of California have undertaken other
18 response actions at the Site, including ongoing Site maintenance
19 and Site security. Since 1989 EPA has been conducting routine
20 groundwater monitoring as part of a groundwater remedial
21 investigation.

22 H. On May 23, 1990, EPA issued to Respondents and Phillips
23 Petroleum, Inc., Unilateral Administrative Order No. 90-12 for
24 Partial Remedial Investigation and Response Actions, which order
25 related in part to groundwater work. This Order supersedes Order
26 No. 90-12 and renders Order No. 90-12 null and void.

27 I. The waste at the Site has a pH of less than 2 and thus
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1 exhibits the RCRA characteristic of corrosivity. The waste
2 contains various organic compounds including benzene, toluene and
3 xylene, inorganic chemicals including arsenic and chromium, and
4 high levels of sulfur compounds including sulfur dioxide. The
5 principal threats at the Site include the inhalation of benzene
6 and sulfur dioxide and the ingestion of arsenic.

7 J. Oil Company Respondents, or their predecessors in
8 interest, each generated refinery waste sludge that was disposed
9 of at the McColl Site. Oil Company Respondents, or their
10 predecessors in interest, each arranged for the disposal or
11 treatment, or arranged with a transporter for transport for
12 disposal or treatment, of hazardous substances that each owned or
13 possessed and that were disposed of at the McColl Site.

14 K. Respondent McAuley is now and has been since 1980 the
15 owner of a portion of the McColl Site.

16 17 III. CONCLUSIONS OF LAW AND DETERMINATIONS

18 A. The McColl Site and any other area where hazardous
19 substances have come to be located is a "facility" as defined in
20 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21 B. Each Respondent is a "person" as defined in Section
22 101(21) of CERCLA, 42 U.S.C. § 9601(21).

23 C. Respondents are each a "liable party" as defined in
24 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and are subject to
25 this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

26 D. The substances found at the Site are "hazardous
27 substances" as defined in Section 101(14) of CERCLA, 42 U.S.C.

1 § 9601(14).

2 E. The past disposal and migration of hazardous substances
3 from the Site constitute "releases" as defined in Section 101(22)
4 of CERCLA, 42 U.S.C. § 9601(22).

5 F. The potential for future migration of hazardous
6 substances from the Site poses a threat of a "release" as defined
7 in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

8 G. The release and threat of release of one or more
9 hazardous substances from the facility may present an imminent
10 and substantial endangerment to the public health or welfare or
11 the environment.

12 H. The actions required by this Order are necessary to
13 protect the public health, welfare and the environment.

14
15 IV. NOTICE TO THE STATE

16 On July 2, 1993, prior to issuing this Order, EPA notified
17 the State of California, Department of Toxic Substances Control,
18 that EPA would be issuing this Order.

19
20 V. ORDER

21 Based on the foregoing, the Respondents are hereby ordered
22 to comply with the following provisions, including but not
23 limited to all attachments to this Order, all documents
24 incorporated by reference into this Order, and all schedules and
25 deadlines contained in this Order, attached to this Order, or
26 incorporated by reference into this Order.

VI. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Day" shall mean a working day, which shall mean a day other than a Saturday, Sunday, Federal holiday, or the days November 24 through 26 and December 20 through 31 of each year. In computing any period of time under this Order, where the last day would fall on a day that is not a working day, the period shall run until the end of the next working day.

"EPA" shall mean the United States Environmental Protection Agency.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, including any amendments thereto.

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the source soils operable unit of the McColl Site, signed on June 30, 1993, by the Acting Regional Administrator, EPA Region IX, and all attachments thereto.

1 "Remedial Design" or "RD" shall mean those activities to be
2 undertaken to develop the final plans and specifications for the
3 Remedial Action pursuant to the Statement of Work and this Order.

4 "Section" shall mean a portion of this Order identified by a
5 roman numeral, and includes one or more paragraphs identified by
6 capital letter.

7 "Site" or "McColl Superfund Site" shall mean the property
8 located at 2650 Rosecrans Avenue, Fullerton, California,
9 including all areas where hazardous substances were disposed or
10 have come to be located.

11 "SOW(s)" shall mean the Statement(s) of Work for Remedial
12 Design and other response actions at the Site, as set forth in
13 Appendix 2 to this Order (SOW to Oil Company Respondents) and
14 Appendix 3 to this Order (SOW to Respondent McAuley) and any
15 modifications made to the SOWs under this Order.

16 "State" shall mean the State of California.

17 "United States" shall mean the United States of America.

18 "Work" shall mean all activities Respondents are required to
19 perform under this Order and the SOWs attached hereto, including
20 Remedial Design, other response actions and any activities
21 required to be undertaken pursuant to Sections IX (Work To Be
22 Performed) through XVIII (Enforcement and Reservations) of this
23 Order.

24 "Work Plan" shall mean a work plan developed by the
25 Respondents and approved by EPA which details work to be
26 conducted pursuant to the SOW and this Order.

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1 B. Respondents shall provide a copy of this Order to any
2 prospective owners or successors before a controlling interest in
3 Respondents' assets, property rights, or stock are transferred to
4 the prospective owner or successor. Respondents shall provide a
5 copy of this Order to each contractor, sub-contractor,
6 laboratory, or consultant retained to perform any Work under this
7 Order, within five (5) days after the effective date of this
8 Order or on the date such services are retained, whichever date
9 occurs later. Respondents shall also provide a copy of this
10 Order to each person representing any Respondent with respect to
11 the Site or the Work and shall condition all contracts and
12 subcontracts entered into hereunder upon performance of the Work
13 in conformity with the terms of this Order. With regard to the
14 activities undertaken pursuant to this Order, each contractor and
15 subcontractor shall be deemed to be related by contract to the
16 Respondents within the meaning of Section 107(b)(3) of CERCLA, 42
17 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract,
18 Respondents are responsible (and each Respondent is) responsible
19 for compliance with this Order and for ensuring that their (its)
20 contractors, subcontractors and agents comply with this Order,
21 and perform any Work in accordance with this Order.

22 IX. WORK TO BE PERFORMED

23 A. General Obligations

24 1. Respondents shall cooperate with EPA in providing infor-
25 mation regarding the Work to the public. As requested by EPA,
26 Respondents shall participate in the preparation of such informa-
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tion for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

2. Notwithstanding any approvals which may be granted by the United States or other governmental entities, Respondents shall assume any and all liability arising from or relating to their contractors, subcontractors, or any other person acting on their behalf in the performance of the Work or their failure to perform fully or complete the Work.

3. Oil Company Respondents' Project Coordinator

a. Oil Company Respondents shall appoint a representative ("Project Coordinator") designated by them to act on their behalf to coordinate the Work. Within five (5) days after the effective date of this Order, the Oil Company Respondents shall notify EPA in writing of the name and qualifications of the Project Coordinator, including the support entities and staff, proposed to be used in carrying out Work under this Order. If at any time Oil Company Respondents propose to use a different Project Coordinator, Oil Company Respondents shall notify EPA and shall obtain approval from EPA before the new Project Coordinator performs any Work under this Order.

b. EPA will review the Oil Company Respondents' selection of a Project Coordinator according to the terms of this paragraph. If EPA disapproves of the selection of the Project Coordinator, the Oil Company Respondents shall submit to EPA within twenty (20) days after receipt of EPA's disapproval of the Project Coordinator previously selected, a list of Project

1 Coordinators, including primary support entities and staff, that
2 would be acceptable to the Oil Company Respondents. EPA will
3 thereafter provide notice to Oil Company Respondents of the names
4 of the Project Coordinators that are acceptable to EPA. The Oil
5 Company Respondents may then select any approved Project
6 Coordinator from that list and shall notify EPA of the name of
7 the Project Coordinator selected within fifteen (15) days of
8 EPA's designation of the approved Project Coordinator.

9 c. Within fifteen (15) days after the effective date
10 of this Order, the Oil Company Respondents shall submit to EPA
11 for approval a Communication and Coordination Plan (CCP) that
12 specifies the requirements and procedures by which the Oil
13 Company Respondents will communicate and coordinate with one
14 another in carrying out the requirements of the Order. The CCP
15 shall include at a minimum the following:

16 i. Communication Strategy The Oil Company Respondents
17 shall specify how the Project Coordinator and the individual Oil
18 Company Respondents will communicate and disseminate information
19 relative to this Order. The name, title, address and telephone
20 number of the primary contact person for each Oil Company
21 Respondent shall be included in the communication strategy.

22 ii. Coordination of Efforts The Oil Company
23 Respondents shall describe with specificity how the technical,
24 financial, and administrative requirements of this Order are to
25 be coordinated and distributed among and performed by the Oil
26 Company Respondents. The CCP shall describe the obligations of
27 each and every Oil Company Respondent in full.

1 d. A duly authorized representative of each Oil
2 Company Respondent shall sign the CCP prior to submission of the
3 CCP to EPA. Failure of any Oil Company Respondent to sign the
4 CCP will constitute a violation of this Order by the individual
5 Respondent.

6 e. The Oil Company Respondents shall submit all
7 proposed changes or amendments to the CCP to EPA for approval.

8 f. The CCP as approved by EPA shall be incorporated
9 into and enforceable under this Order.

10 4. Respondent McAuley's Project Coordinator

11 a. Respondent McAuley shall appoint a representative
12 ("Project Coordinator") designated by it to act on its behalf to
13 coordinate the Work. Within ten (10) days after the effective
14 date of this Order, Respondent McAuley shall notify EPA in
15 writing of the name and qualifications of the Project
16 Coordinator, including the support entities and staff, proposed
17 to be used in carrying out Work under this Order. If at any time
18 Respondent McAuley proposes to use a different Project
19 Coordinator, Respondent McAuley shall notify EPA and shall obtain
20 approval from EPA before the new Project Coordinator performs any
21 Work under this Order.

22 b. EPA will review Respondent McAuley's selection of a
23 Project Coordinator according to the terms of this paragraph. If
24 EPA disapproves of the selection of the Project Coordinator,
25 Respondent McAuley shall submit to EPA within twenty (20) days
26 after receipt of EPA's disapproval of the Project Coordinator
27 previously selected, a list of Project Coordinators, including
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1 primary support entities and staff, that would be acceptable to
2 Respondent McAuley. EPA will thereafter provide notice to
3 Respondent McAuley of the names of the Project Coordinators that
4 are acceptable to EPA. Respondent McAuley may then select any
5 approved Project Coordinator from that list and shall notify EPA
6 of the name of the Project Coordinator selected within fifteen
7 (15) days of EPA's designation of the approved Project
8 Coordinator.

9 5. Respondents shall submit all reports (daily, weekly,
10 monthly, etc.) prepared by their contractors and subcontractors
11 in accordance with the SOWs to EPA's designated Project Manager
12 or other persons EPA may select.

13 B. Submission of Work Plans and Other Documents

14 1. Documents to be Submitted by Oil Company Respondents: In
15 accordance with the SOW attached as Appendix 2 to this Order, the
16 Oil Company Respondents shall submit Work Plans and other
17 documents to EPA for the design of the Remedial Action at the
18 Site and for other response actions, including groundwater
19 monitoring, groundwater remedial investigation and feasibility
20 study activities and site maintenance. Upon approval by EPA, all
21 Work Plans submitted by the Oil Company Respondents pursuant to
22 the SOW shall be incorporated into and become enforceable under
23 this Order. Upon approval by EPA of the required Work Plans, the
24 Oil Company Respondents shall implement the Work Plans in
25 accordance with the schedule approved by EPA. The Oil Company
26 Respondents shall submit all plans, submittals and other
27 deliverables required under the approved Work Plans in accordance
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1 with the approved schedule for review and approval pursuant to
2 the SOW. Unless otherwise directed by EPA, the Oil Company
3 Respondents shall not commence any Remedial Design Activities or
4 any other response actions at the Site prior to approval of the
5 required Work Plans.

6 2. Documents to be Submitted by Respondent McAuley: In
7 accordance with the SOW attached as Appendix 3 to this Order,
8 Respondent McAuley shall submit a Work Plan and other documents
9 to EPA for the design of certain response actions at the Site,
10 including site maintenance and site security. Upon approval by
11 EPA, the Work Plan submitted by Respondent McAuley pursuant to
12 the SOW shall be incorporated into and become enforceable under
13 this Order. Upon approval by EPA of the required Work Plan,
14 Respondent McAuley shall implement the Work Plan in accordance
15 with the schedule approved by EPA. Respondent McAuley shall
16 submit all plans, submittals and other deliverables required
17 under the approved Work Plan in accordance with the approved
18 schedule for review and approval pursuant to the SOW. Unless
19 otherwise directed by EPA, Respondent McAuley shall not commence
20 any response actions at the Site prior to approval of the
21 required Work Plan.

22 3. Upon three (3) days advance notice by EPA, by telephone
23 or in writing, to one or both Project Coordinators for
24 Respondents, the Project Coordinator(s) shall attend a scoping
25 meeting at a time and place determined by EPA, to discuss issues
26 relating to the contents of any deliverable, plan, report, or
27 other item which is required to be submitted for review and
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1 approval pursuant to this Order, or relating to Work to be
2 performed by Respondents pursuant to this Order.

3 4. After review of any deliverable, plan, report, or other
4 item which is required to be submitted for review and approval
5 pursuant to this Order, EPA may: (a) approve the submission; (b)
6 approve the submission with modifications; (c) disapprove the
7 submission and direct Respondents to re-submit the document after
8 incorporating EPA's comments; or (d) disapprove the submission
9 and assume responsibility for performing all or any part of the
10 response action. As used in this Order, the terms "approval by
11 EPA", "EPA approval" or a similar term mean the action described
12 in subparagraphs (a) or (b) of this paragraph.

13 5. In the event of approval or approval with modifications
14 by EPA, Respondents shall proceed to take any action required by
15 the deliverable, plan, report, or other item, as approved or
16 modified by EPA.

17 6. Upon receipt of the notice of disapproval or a request
18 for modification, Respondents shall, within the time set forth on
19 the schedules in the SOWs, correct the deficiencies and resubmit
20 the deliverable, plan, report or other item for approval.
21 Notwithstanding the notice of disapproval, Respondents shall
22 proceed, at the direction of EPA, to take any action required by
23 any non-deficient portion of the submission.

24 7. If any submission is not approved by EPA, Respondents
25 shall be deemed to be in violation of this Order.

26 8. The Work performed by the Respondents pursuant to this
27 Order shall, at a minimum, comply with the SOWs and be consistent
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1 with the ROD.

2 C. No Warranty Regarding Work Plans

3 Neither the Work Plans nor any approvals, permits or other
4 permissions that may be granted by EPA related to this Order
5 constitute a warranty or representation of any kind by the United
6 States that the Work Plans will achieve the standards set forth
7 in the ROD, and in the SOW, and shall not foreclose the United
8 States from seeking performance of all terms and conditions of
9 this Order. Nothing in this Order shall be construed to relieve
10 Respondents of their obligations to achieve all standards set
11 forth in the ROD and in the SOW.

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13 X. ENDANGERMENT AND EMERGENCY RESPONSE

14 A. In the event of any action or occurrence during the
15 performance of the Work which causes or threatens to cause a
16 release of a hazardous substance or which may present an
17 immediate threat to public health or welfare or the environment,
18 Respondents shall immediately take all appropriate action to
19 prevent, abate, or minimize the threat, and shall immediately
20 notify the EPA Project Manager. If this person is not available,
21 Respondents shall notify the EPA Emergency Response Unit, Region
22 IX. Respondents shall take such action in consultation with
23 EPA's Project Manager, and in accordance with all applicable
24 provisions of this Order and all applicable deliverables
25 submitted pursuant to the SOWs, including but not limited to the
26 Health and Safety Plans and the Contingency Plans. In the event
27 that Respondents fail to take appropriate response action as

1 required by this Section, and EPA takes that action instead,
2 Respondents shall be liable to the extent permitted under CERCLA.

3 B. Nothing in the preceding paragraph shall be deemed to
4 limit any authority of the United States to take, direct, or
5 order all appropriate action to protect human health and the
6 environment or to prevent, abate, or minimize an actual or
7 threatened release of hazardous substance on, at, or from the
8 Site.

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10 XI. COMPLIANCE WITH APPLICABLE LAWS

11 A. All activities conducted by Respondents pursuant to this
12 Order shall be performed in accordance with the requirements of
13 all Federal and state laws and regulations. EPA has determined
14 that the activities contemplated by this Order are consistent
15 with the National Contingency Plan (NCP) if performed in full
16 compliance with the ROD, this Order, and the plans and schedules
17 approved hereunder.

18 B. Except as provided in Section 121(e) of CERCLA and the
19 NCP, no permit shall be required for any activities conducted
20 entirely on-Site; however, Respondents shall comply with all
21 applicable or relevant and appropriate requirements set forth in
22 the ROD. Where any activities require a Federal or state permit
23 or approval, Respondents shall submit timely applications and
24 take all other actions necessary to obtain and to comply with all
25 such permits or approvals.

26 C. This Order is not, and shall not be construed to be, a
27 permit issued pursuant to any Federal or state statute or
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1 regulation.

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3 XII. PROJECT MANAGER

4 A. All communications, whether written or oral, from
5 Respondents to EPA shall be directed to EPA's Project Manager.
6 Respondent shall submit to EPA six (6) copies of all
7 deliverables, documents, including plans, reports, and other
8 correspondence, which are developed pursuant to this Order, and
9 shall send these documents by overnight mail to EPA's Project
10 Manager unless directed otherwise.

11 EPA's Project Manager is:

12 John Blevins
13 EPA H-6-1
14 75 Hawthorne Street
San Francisco, California 94105
(415) 744-2241

15 B. EPA has the unreviewable right to change its Project
16 Manager. If EPA changes its Project Manager, EPA will inform
17 Respondents in writing of the name, address, and telephone number
18 of the new Project Manager.

19 C. EPA's Project Manager shall have the authority lawfully
20 vested in Remedial Project Managers and On-Scene Coordinators by
21 the National Contingency Plan, 40 C.F.R. Part 300. EPA's Project
22 Manager shall have authority, consistent with the National
23 Contingency Plan, to halt any work required by this Order, and to
24 take any necessary response action.

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26 XIII. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

27 A. Respondent McAuley shall provide access to its property
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1 to EPA and EPA's authorized representatives and contractors and
2 to the Oil Company Respondents for the purpose of carrying out
3 the requirements of this Order.

4 B. To the extent that the Site or other areas where Work is
5 to be performed is owned or controlled by parties other than
6 those bound by this Order, and to the extent that access to or
7 easements over property is required for the proper and complete
8 performance of this Order, the Oil Company Respondents shall
9 obtain access agreements from the present owners or those persons
10 who have control over the property, including lessees, within
11 sixty (60) days of the effective date of this Order. Site access
12 agreements shall provide access to EPA, its contractors and
13 representatives, and to Respondents and their Contractor(s) and
14 authorized representatives, and such agreements shall specify
15 that Respondents are not EPA's representatives with respect to
16 liability associated with Site activities.

17 C. Respondents shall save and hold harmless the United
18 States and its officials, agents, employees, contractors,
19 subcontractors, or representatives for or from any and all claims
20 or causes of action or other costs incurred by the United States
21 including but not limited to attorneys fees and other expenses of
22 litigation and settlement arising from or on account of acts or
23 omissions of Respondents, their officers, directors, employees,
24 agents, contractors, subcontractors, and any persons acting on
25 their behalf or under their control, in carrying out activities
26 pursuant to this Order.

27 D. In the event that site access agreements are not ob-
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1 tained within the sixty (60) day period, the Oil Company
2 Respondents shall notify EPA within sixty five (65) days of the
3 effective date of this Order regarding both the lack of, and
4 efforts to obtain, such agreements. If the Oil Company
5 Respondents fail to gain access within 60 days, they shall
6 continue to use best efforts to obtain access until access is
7 granted. For purposes of this paragraph, "best efforts"
8 includes, but is not limited to, seeking judicial assistance and
9 the payment of money as consideration for access.

10 E. Respondents or any of their agents or representatives
11 shall allow EPA and its authorized representatives and
12 contractors to enter and freely move about all property at the
13 Site and off-Site areas subject to or affected by the Work under
14 this Order or where documents required to be prepared or
15 maintained by this Order are located, for the purposes of
16 inspecting conditions, activities, the results of activities,
17 records, operating logs, and contracts related to the Site or
18 Respondents and their representatives or contractors pursuant to
19 this Order; reviewing the progress of the Respondents in carrying
20 out the terms of this Order; conducting tests as EPA or its
21 authorized representatives or contractors deem necessary; using a
22 camera, sound recording device or other documentary type
23 equipment; and verifying the data submitted to EPA by
24 Respondents. Respondents shall allow EPA and its authorized
25 representatives and contractors to enter the Site, to inspect and
26 copy all records, files, photographs, documents, sampling and
27 monitoring data, and other writings related to work undertaken in
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1 carrying out this Order. Nothing herein shall be interpreted as
2 limiting or affecting EPA's right of entry or inspection
3 authority under Federal law.

4 F. Respondents may assert a claim of business
5 confidentiality covering part or all of the information submitted
6 to EPA pursuant to the terms of this Order under 40 C.F.R.
7 § 2.203, provided such claim is not inconsistent with Section
8 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions
9 of law. This claim shall be asserted in the manner described by
10 40 C.F.R. § 2.203(b) and substantiated by Respondents at the time
11 the claim is made. Information determined to be confidential by
12 EPA will be given the protection specified in 40 C.F.R. Part 2.
13 If no such claim accompanies the information when it is submitted
14 to EPA, it may be made available to the public by EPA or the
15 State without further notice to the Respondents. Respondents
16 shall not assert confidentiality claims with respect to any data
17 related to Site conditions, sampling, monitoring or any other
18 information addressed by Section 104(e)(7).

19 G. Respondents shall maintain for the period during which
20 this Order is in effect, an index of documents that Respondents
21 claim contain confidential business information. The index shall
22 contain, for each document, the date, author, addressee, and
23 subject of the document. Upon written request from EPA,
24 Respondents shall submit a copy of the index to EPA.

25 H. Any person obtaining access to the Site pursuant to this
26 provision shall comply with all applicable provisions of the
27 Worker Health and Safety Plans as submitted pursuant to the SOW.
28

1 I. Notwithstanding any provision of this Order, the United
2 States retains all of its access authorities and rights under
3 CERCLA, RCRA and any other applicable federal statute or
4 authority.

5 J. Each Respondent shall provide to EPA upon request, copies
6 of all documents and information within their possession and/or
7 control or that of its contractors or agents relating to
8 activities at the Site or to the implementation of this Order,
9 including but not limited to trucking logs, receipts, reports,
10 correspondence, or other documents or information related to the
11 Work. Each Respondent shall also make available to EPA for
12 purposes of investigation, information gathering, or testimony,
13 its employees, agents, or representatives with knowledge of
14 relevant facts concerning the performance of the Work.

15
16 XIV. RECORD PRESERVATION

17 Until ten (10) years after EPA provides notice to
18 Respondents that the Work has been completed, each Respondent
19 shall preserve and retain all records and documents in its
20 possession or control, including the documents in the possession
21 or control of their contractors and agents on and after the
22 effective date of this Order, that relate in any manner to the
23 Site. At the conclusion of this document retention period, each
24 Respondent shall notify the United States at least sixty (60)
25 days prior to the destruction of any such records or documents,
26 and upon request by the United States, Respondents shall deliver
27 any such records or documents to EPA.

1
2 XV. DELAY IN PERFORMANCE

3 A. Any delay in performance of this Order that, in EPA's
4 judgment, is not properly justified by Respondents under the
5 terms of this Section shall be considered a violation of this Or-
6 der. Any delay in performance of this Order shall not affect
7 Respondents' obligations to fully perform all obligations under
8 the terms and conditions of this Order.

9 B. Respondents shall notify EPA of any delay or anticipated
10 delay in performing any requirement of this Order. Such
11 notification shall be made by telephone to EPA's Project Manager
12 within forty eight (48) hours after any Respondent first knew or
13 should have known that a delay might occur. Respondents shall
14 adopt all reasonable measures to avoid or minimize any such
15 delay. Within five (5) days after notifying EPA by telephone,
16 Respondents shall provide written notification fully describing
17 the nature of the delay, any justification for delay, any reason
18 why Respondents should not be held strictly accountable for
19 failing to comply with any relevant requirements of this Order,
20 the measures planned and taken to minimize the delay, and a
21 schedule for implementing the measures that will be taken to
22 mitigate the effect of the delay. Increased costs or expenses
23 associated with implementation of the activities called for in
24 this Order is not a justification for any delay in performance.

25
26 XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

27 A. Each Respondent shall demonstrate its ability to complete
28

1 the Work required by this Order and to pay all claims that arise
2 from the performance of the Work by obtaining and presenting to
3 EPA within ninety (90) days after the effective date of this
4 Order, one of the following: (1) a performance bond; (2) a letter
5 of credit; (3) a guarantee by a third party; or (4) internal
6 financial information to allow EPA to determine that Respondent
7 has sufficient assets available to perform the Work. The Oil
8 Company Respondents shall demonstrate financial assurance to
9 complete work costing not less than \$10,000,000. Respondent
10 McAuley shall demonstrate financial assurance to complete work
11 costing not less than \$200,000 per year. If Respondents present
12 internal financial information and EPA determines that such
13 financial information is inadequate, Respondents shall, within
14 thirty (30) days after receipt of EPA's notice of determination,
15 obtain and present to EPA for approval one of the other three
16 forms of financial assurance listed above.

17 B. At least seven (7) days prior to commencing any work at
18 the Site pursuant to this Order, Respondents shall submit to EPA
19 a certification that Respondents or their contractors and
20 subcontractors have adequate insurance coverage or have
21 indemnification for liabilities for injuries or damages to
22 persons or property which may result from the activities to be
23 conducted by or on behalf of Respondents pursuant to this Order.
24 Respondents shall ensure that such insurance or indemnification
25 is maintained for the duration of performance of the Work
26 required by this Order.

1 XVII. UNITED STATES NOT LIABLE

2 The United States, by issuance of this Order, assumes no
3 liability for any injuries or damages to persons or property
4 resulting from acts or omissions by any or all Respondents, or
5 their directors, officers, employees, agents, representatives,
6 successors, assigns, contractors, or consultants in carrying out
7 any action or activity pursuant to this Order. Neither EPA nor
8 the United States may be deemed to be a party to any contract
9 entered into by any or all Respondents or their directors,
10 officers, employees, agents, successors, assigns, contractors, or
11 consultants in carrying out any action or activity pursuant to
12 this Order.

13
14 XVIII. ENFORCEMENT AND RESERVATIONS

15 A. EPA reserves the right to pursue a claim in the pending
16 action (United States et al. v. Shell Oil Co., et al., No. Cv-91-
17 0589 RJK(Ex)), or to bring another action against Respondents
18 under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of
19 any response costs incurred by the United States related to this
20 Order. This reservation shall include but not be limited to past
21 costs, direct costs, indirect costs, the costs of oversight, the
22 costs of compiling the cost documentation to support oversight
23 cost demand, as well as accrued interest as provided in Section
24 107(a) of CERCLA.

25 B. Notwithstanding any other provision of this Order, at any
26 time during the response action, EPA may perform its own studies,
27 complete the response action (or any portion of the response
28

1 action) as provided in CERCLA and the NCP, and seek reimbursement
2 from Respondents for its costs, or seek any other appropriate
3 relief.

4 C. Nothing in this Order shall preclude EPA from taking any
5 additional enforcement actions, including modification of this
6 Order or issuance of additional Orders, and/or additional
7 remedial or removal actions as EPA may deem necessary, or from
8 requiring Respondents in the future to perform additional ac-
9 tivities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any
10 other applicable law. Respondents shall be liable under CERCLA
11 Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such
12 additional actions.

13 D. Notwithstanding any provision of this Order, the United
14 States hereby retains all of its information gathering, inspec-
15 tion and enforcement authorities and rights under CERCLA, RCRA
16 and any other applicable statutes or regulations.

17 E. Each Respondent shall be subject to civil penalties under
18 Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than
19 \$25,000 for each day in which it willfully violates, or fails or
20 refuses to comply with this Order without sufficient cause. In
21 addition, failure to properly provide response action under this
22 Order, or any portion hereof, without sufficient cause, may
23 result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C.
24 § 9607(c)(3), for punitive damages in an amount at least equal
25 to, and not more than three times, the amount of any costs
26 incurred by the Fund as a result of such failure to take proper
27 action.

1 F. Nothing in this Order shall constitute or be construed as
2 a release from any claim, cause of action or demand in law or
3 equity against any person for any liability it may have arising
4 out of or relating in any way to the Site.

5 G. If a court issues an order that invalidates any provision
6 of this Order or finds that any Respondent has sufficient cause
7 not to comply with one or more provisions of this Order,
8 Respondents shall remain bound to comply with all provisions of
9 this Order not invalidated by the court's order.

10
11 XIX. EFFECTIVE DATE AND COMPUTATION OF TIME

12 This Order shall be effective five (5) days after the Order
13 is signed by the Director, Hazardous Waste Management Division.
14 All times for performance of ordered activities shall be
15 calculated from this effective date.

16
17 XX. OPPORTUNITY TO CONFER

18 A. Respondents may, within five (5) days after the date this
19 Order is signed, request a conference with the EPA Project
20 Manager to discuss this Order. If requested, the conference
21 shall occur within ten (10) days of the request unless EPA
22 approves a later date. The conference shall take place at EPA's
23 offices at 75 Hawthorne Street, San Francisco, California.

24 B. The purpose and scope of the conference shall be limited
25 to issues involving the implementation of the response actions
26 required by this Order and the extent to which Respondents intend
27 to comply with this Order. This conference is not an evidentiary

1 hearing, and does not constitute a proceeding to challenge this
2 Order. It does not give Respondents a right to seek review of
3 this Order, or to seek resolution of potential liability, and no
4 official stenographic record of the conference will be made. At
5 any conference held pursuant to Respondents' request, Respondents
6 may appear in person or by an attorney or other representative.
7 Requests for a conference must be by telephone to John Blevins,
8 (415) 744-2241, followed by written confirmation mailed that day
9 to John Blevins, McColl Project Manager, H-6-1, 75 Hawthorne
10 Street, San Francisco, California 94105.

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12
13
14 SO ORDERED, this 6th day of July, 1993.

15
16 BY: 

17 Jeff Zelikson
18 Director, Hazardous Waste Management Division
19 U.S. Environmental Protection Agency
20 Region IX
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